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SENSITIVE

SIPDIS

STATE FOR INL/AAE JUDITH CAMPBELL
DOJ FOR CARL ALEXANDRE AND DOJ/OPDAT,
CHRISTOPHER LEHMANN, CATHERINE NEWCOMBE, AND DOJ/USDOJ, AND BRUCE
SWARTZ AND CRIM/AAG

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TAGS: PHUM PGOV PREL KDEM KJUS AM
SUBJECT: DOJ HOLDS CRIMINAL LAW SEMINAR FOR ARMENIAN JUDGES

YEREVAN 00000758 001.2 OF 002

(U) Sensitive but unclassified. Please protect accordingly.

SUMMARY

¶1. (SBU) The U.S. Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) held a seminar on "Rules of Evidence in Adversarial Proceedings" on September 13-14, 2008, in Armenia. The conference was attended by Armenian judges, judicial candidates and officials of the Armenian Judicial School as well as two U.S. federal judges. The seminar reviewed Armenian jurisprudence and practices, comparing them to the American experience and the requirements of the European Convention on Human Rights. The training covered evidentiary issues, the uses of case law, plea bargaining and cooperation agreements, and the judicial exclusion of illegally obtained evidence, among other topics. END SUMMARY

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ARMENIAN JUDICIARY FACING CHALLENGES ON MANY FRONTS
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¶2. (SBU) The Armenian judiciary faces numerous challenges as it attempts to create a jurisprudence that has strong roots in its Soviet history while adopting western-style adversarial procedures that conform to the European Convention on Human Rights. Moreover, the Armenian judiciary faces difficult institutional problems as the executive branch and the Armenian Procuracy exert great control over Armenian judges, thereby undermining their independence and integrity. Furthermore, the judiciary is held in very low esteem by the public, with the widespread belief that many judges are corrupt.

USDOJ / OPDAT PLUNGES IN

¶3. (SBU) Given this setting, USDOJ/ OPDAT developed a training program for judges and judicial candidates that would introduce them to American jurisprudence and probe them on the development of their own practices. The INL-funded program held the first of a series of judge-only seminars on September 13-14 at Tsakhadzor, Armenia. Twenty-nine judges, judicial candidates, and officials of the Armenian Judicial School were in attendance. The American trainers for the session were U.S. District Court Judges Philip Pro (Nevada) and David O. Carter (Central District of California), and USDOJ

Resident Legal Advisor Steven Kessler.

¶4. (SBU) One of the most critical issues facing the Armenian judiciary is the role of the police within the adversarial system. At present, Armenian police officers only testify at trial if they are called as actual crime witnesses or crime victims. Police officers who investigate cases, find evidence at crime scenes, or take confessions from defendants are not called to testify. Instead, their official reports are read into the record at trial and there is no effective way for the defense to challenge their findings, because the police officers are prohibited by statute from testifying. In the USDOJ/ OPDAT seminar, the Americans raised this issue, asking whether it was fair to the defendant and whether that lack of trial confrontation comported with the European Convention on Human Rights. (Armenia is a member of the Council of Europe and has ratified the European Convention of Human Rights). The American trainers also asked the Armenian judges what should be their responsibility in cases where they suspect police evidence is unreliable or mendacious.

¶5. (SBU) The seminar also focused on how case law should be developed in Armenian jurisprudence. The American judges shared numerous examples of how American judicial independence was strengthened when U.S. courts established judicial rules in a legislative vacuum. In Armenia the Cassation Court has recently acquired case-law authority, but they have been unable, as yet, to provide direction to the lower courts through their decisions. The use of case law is very much a novelty for Armenians as they have been educated and trained in civil case law as developed in continental Europe.

¶6. (SBU) A third significant issue covered by the seminar was the use of plea bargaining and cooperation agreements. Armenia has a form of plea bargaining called "expedited proceedings." However this new procedure has many faults at present. For example, there is no

possibility for an Armenian defendant to plead guilty as part of a cooperation agreement that would include a delay in his sentencing during the pendency of his cooperation. OPDAT's Residential Legal Advisor explained the US practice to the Armenian judges, providing examples of how organized crime can be infiltrated using cooperating informants. At the training the American judges demonstrated a typical guilty plea allocution, which was far more detailed than the procedures used by Armenian judges. Although Armenia does not, at present, need plea bargaining for efficiency purposes (since their caseload is significantly below US standards), plea bargaining, cooperation agreements, and higher sentences for defendants would greatly increase the capacity of law enforcement to fight corruption and organized crime. Many Armenians remain skeptical of such procedures, as they feel it would lead to unlimited prosecutorial discretion, with resulting corruption; others are concerned that cooperation agreements are somehow unfair or unsound as a mechanism for greater law enforcement.

COMMENT

¶7. (SBU) The USDOJ/OPDAT training succeeded in introducing Armenian judges to American practices as a means to examine and reform their own procedures. The training also provided a focused professional environment in which Armenian appellate judges, criminal trial judges, judicial candidates, and American practitioners could discuss practical pressing issues. Armenian judicial practitioners will need to reform their practices and develop a strong judiciary if they are to confront and overcome organized crime, international financial crime, and corruption.

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